REMARKS

This application has been carefully reviewed in light of the Final Office Action dated August 9, 2006. Claims 1-22 remain pending in this application. Claims 1-22 were finally rejected by the Examiner. Claims 1, 9, 15, and 19 are the independent claims. Applicant has amended Claims 1, 9, and 19. No new matter has been added. Favorable reconsideration is respectfully requested.

The Office Action rejected Claims 1-14 and 19-22 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. The Office Action also rejected Claims 6, 8, 13, 14, 17, 18, and 21 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter with Applicant regards as the invention Finally, the Office Action rejected Claims 1-22 on the grounds of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-21 of U.S. Patent No. 6,947,960 as the two sets of claims are not patently distinct from each other.

Applicant has amended Claims 1, 9, and 19 and now believes those claims to be allowable. Applicant is continued to be confused by the Examiner's §112, second paragraph rejection of Claims 6, 8, 13, 14, 17, 18, and 21 and the Examiner's statement that the term "exponential averaging operation" is indefinite because the definition cited in the claim is not exponential average operation but rather a linear function count. As stated in the last response to Office Action, Applicant respectfully notes that the application of the specified equation will produce a definite result, and thus the assertion that the claims are indefinite is unfounded, regardless of the Examiner's preferred characterization of the equation. Furthermore as previously stated by the Applicant, the term "exponential average" for the operation of this equation is provided at page 8 of the Applicant's specification, and particularly at lines 15-17: "Note that the *expected value* of the exponential average is the exponential average of the expected values of the individual bits: $\frac{1}{2} + \frac{1}{2}\alpha + \frac{1}{2}\alpha^2$

+ ... = $n / 2$." The Applicant is not attempting to read limitations from the specification into the claims as stated by the Examiner but is merely using the a term in a claim that is clearly defined in the specification as the Applicant has a right to as his own lexicographer. Because the Applicant provides a specific equation for determining a term that the applicant defines as an exponential average, the applicant respectfully maintains that the rejection of claims 6, 13, 17, and 21 under 35 U.S.C. 112, second paragraph as being indefinite is unfounded.

Claims 2-8 depend from independent Claim 1 as discussed above, Claims 10-14 depend from independent Claim 9 as discussed above, Claims 16-18 depend from independent Claim 15 as discussed above, and Claims 20-22 depend from independent Claim 19 as discussed above and are therefore believed patentable for at least the same reasons.

Once the Examiner has deemed the claims allowable, Applicant will timely file the necessary terminal disclaimer with respect to U.S. Patent No. 6,947,960

In view of the foregoing amendments and remarks, Applicant respectfully submits that the currently pending claims are clearly patentably distinguishable over the cited and applied references. Accordingly, entry of this amendment, reconsideration of the rejections of the claims over the references cited, and allowance of this application is earnestly solicited.

Respectfully submitted,

By _____

Adam L. Stroud,
Reg. No. 48,410
Attorney
(408) 474-9064
September 19, 2006